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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/579,167

02/08/2007

Robert Barrie Ainscow

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10/29/2010

GABLE & GOTWALS

100 WEST FIFTH STREET, 10TH FLOOR

TULSA, OK 74103

EXAMINER

DOUYON, LORNA M

ART UNIT

PAPER NUMBER

1761

NOTIFICATION DATE

DELIVERY MODE

10/29/2010

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

iplaw@gablelaw.com

<b>Office Action Summary</b>	<b>Application No.</b> 10/579,167	<b>Applicant(s)</b> AINSCOW ET AL.	
	<b>Examiner</b> Lorna M. Douyon	<b>Art Unit</b> 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 06 April 2010.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-5, 7-15 and 18-28 is/are pending in the application.
- 4a) Of the above claim(s) 20-24 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 7-15, 18-19, 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \*    c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)         | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)         | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____   | 6) <input type="checkbox"/> Other: _____                          |

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on April 6, 2010 has been entered.
2. Claims 1-5, 7-15, 18-28 are pending. Claims 20-24 are withdrawn from consideration as being drawn to a nonelected invention. Claims 6, 16 and 17 are cancelled. Claims 1, 7, 8, 9, 18 and 27 are currently amended. Claim 28 is newly added.
3. The rejection of claims 1-5, 10, 13-15, 25-26 under 35 U.S.C. 102(e) as being anticipated by Bone et al. (US Patent No. 7,083,047) is withdrawn in view of Applicants' amendment.
4. The rejection of claim 11 under 35 U.S.C. 103(a) as being unpatentable over Bone as applied to the above claims is withdrawn in view of Applicants' amendment.

***Claim Objections***

5. Claims 1 and 27 are objected to because of the following informalities: the phrase "mineral oil emulsifying agent for emulsifying the mineral oil" in claim 1, lines 5-6 and claim 27, line 7 appears to be redundant. Appropriate correction is required.

***Claim Rejections - 35 USC § 112***

6. Claim 28 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 28, line 10 (last line), "the mineral" lacks antecedent basis in the claim. Presumably this refers to the mineral oil. In addition, it is suggested that "mineral oil" before "emulsifying" in line 10 be deleted to avoid repetition.

***Claim Rejections - 35 USC § 102***

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. Claims 1-3, 5, 8-10, 13, 15, 18-19, 27 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulz et al. (US patent No. 5,008,031), hereinafter "Schulz".

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Schulz teaches a an automatic domestic washing machine composition which comprises 12.0 wt% Na-alkylbenzene sulfonate (anionic surfactant, which reads on emulsifier); 12.6 wt% fatty alcohol-ethoxylate (nonionic surfactant which also reads on emulsifier); 30.15 wt% tripolyphosphate (a builder); 5.0 wt% silicate (also a builder); 0.5 wt% methylcellulose/carboxymethylcellulose (reads on the gelling agent); 0.3 wt% optical brightener; 5.0 wt% paraffin oil; 0.8 Alkalase (enzyme); 25.0 wt% perborate tetrahydrate (bleach); 0.15 wt% dyestuff and 0.3 wt% fragrance (see Table 1 under col. 5). Preferably, sodium perborate tetrahydrate in combination with bleach activators come into consideration as bleaching components (see col. 4, lines 21-24). Sodium percarbonate is another suitable bleach (see col. 4, lines 16-17). The detergent is packed in doses in water soluble film bags (see col. 4, lines 59-63). The paraffin oil is Schulz teaches the limitations of the instant claims. Hence, Schulz anticipates the claims.

### ***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

10. Claims 11 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz as applied to the above claims.

Schulz teaches the features as described above. In addition, Schulz teaches that the paraffin hydrocarbons have 8 to 40 carbon atoms (see col. 1, lines 61-65). The

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cellulose ether is present in the composition in an amount up to about 0.5 by weight (see claim 1). Schulz, however, fails to specifically disclose a gelling agent (i.e., cellulose ether) in an amount between 1-10%, and the paraffin having 20-28 carbon atoms.

As the word "about" permits some tolerance (see *In re Ayers*, 69 USPQ 109, and *In re Erickson*, 145 USPQ 207), the upper limit of about 0.5% of Schulz may be considered to read on the lower limit of 1% of instant claim 11.

With respect to the number of carbon atoms in the paraffin oil, it would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the prima facie case of obviousness. See *In re Boesch*, 627 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578,16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257,191 USPQ 90 (CCPA 1976; *In re Woodruff*; 919 F.2d 1575,16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

11. Claims 1-5, 7-11, 13-15, 18-19, 25-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 2002/0142930), hereinafter "Smith".

Smith teaches a unit dose of detergent product having one or more dishwashing compositions in liquid, gel, paste form, which are substantially anhydrous, and the unit dose includes sachet or pouches having single or multiple compartments (see paragraph [0012] on page 2). In one embodiment, the anhydrous dishwashing composition is in the form of a particulate bleach suspension in a non-aqueous liquid carrier (see paragraph [0016] on page 2). Particulate bleaches suitable for use include inorganic peroxides like percarbonates (see paragraph [0020] on page 2) and chlorine bleaches (see paragraph [0056-0057] on page 5). In preferred embodiments, the dishwashing composition included in the unit dose form comprises a deterative enzyme (see paragraph [0022] on page 3). Bleach precursors and bleach catalysts (i.e., bleach activators) are also added (see paragraph [0057] on page 6). The composition also contains low cloud point non-ionic surfactants (see paragraph [0058-0059] on page 6, in amounts like for example, 5.6 wt% or 4.6 wt% (see paragraph 0076 on page 7). Other suitable components include organic polymers (which read on gelling agents) in levels from about 0.1% to about 30% by weight of the composition (see paragraph [0067] on page 6). The composition can contain a corrosion inhibitor like paraffin in levels of from about 0.05% to about 10% by weight of the composition (see paragraph [0069] on page 6). Other suitable components include optical brighteners and perfumes 9see paragraph

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[0070] on page 7). Smith, however, fails to specifically disclose a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in amounts as those recited.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have prepared a unit dose single compartment containing a composition which comprises bleach, enzyme, mineral oil, nonionic surfactant and gelling agent in their optimum proportions because the teachings of Smith encompass these components and proportions thereof. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272,276,205 USPQ 215,219 (CCPA 1980). See also *In re Woodruff* 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454,456,105 USPQ 233,235 (CCPA 1955).

12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schulz or Smith as applied to the above claims, and further in view of MacQueen et al. (US 6,268,466), hereinafter "MacQueen".

Schulz or Smith teaches the features as described above. Schulz or Smith, however, fails to disclose a tertiary amide terminated polyamide gelling agent.



MacQueen teaches a tertiary amide terminated polyamide gelling agent useful in formulating personal care products and other articles (see abstract) like household products such as household cleaners (see col. 11, lines 17-20).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to substitute the gelling agent of Schulz or Smith with the tertiary amide terminated polyamide gelling agent of MacQueen because the substitution of one gelling agent for another is likely to be obvious when it does no more than yield predictable results.

### ***Response to Arguments***

13. Applicants' arguments filed April 6, 2010 have been fully considered but they are not persuasive.

With respect to the rejection based upon Smith, Applicants argue that the polymers of Smith are dispersing agents and anti-soil agents not gelling agents.

The Examiner respectfully disagrees with the above argument because even though Smith teaches the organic polymers as anti-redeposition and soil release agents and not as gelling agents, please note that the range of proportions (i.e., about 0.1% to about 30% by weight of organic polymers, see paragraph [0067] overlap those recited, hence, said organic polymers would behave similarly as those recited. "Products of identical composition can not have mutually exclusive properties." A chemical composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are

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necessarily present. *In re Spada*, 911 F.2d 705, 709, 15 USPQ2d 1655, 1658 (fed. Cir. 1990). See MPEP 2112.01 II.

With respect to the rejection of claim 12 based upon Smith in view of MacQueen, Applicants argue hindsight reasoning.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Response to Amendment***

14. The affidavitt under 37 CFR 1.132 filed on April 6, 2010 is insufficient to overcome the rejection of claims based upon Smith as set forth in the last Office action because: of the same reasons as in paragraph 13 above.

***Conclusion***

15. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lorna M. Douyon whose telephone number is 571-272-1313. The examiner can normally be reached on Mondays-Fridays 8:00AM-4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lorna M Douyon/  
Primary Examiner, Art Unit 1761

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